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In re Application of	:	
CHO	:	DECISION ON PETITION
Serial No.: 10/560,297	:	
PCT No.: PCT/KR04/01880	:	UNDER 37 CFR 1.47(b)
Int. Filing Date: 26 July 2004	:	
Priority Date: 25 July 2003	:	
Atty Docket No.: 05-429-B	:	
For: METHOD OF ALLOCATING LINKS IN A	:	
1X EVDO SYSTEM	:	

This decision is in response to the "Petition Under 37 CFR § 1.47(b)" filed 07 November 2006 in the United States Patent and Trademark Office (USPTO).

BACKGROUND

On 26 July 2004, applicant filed international application PCT/KR04/01880, which claimed a priority date of 25 July 2003. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 03 February 2005. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee in the United States was to expire 30 months from the priority date, 25 January 2006.

On 12 December 2005, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by the requisite basic national fee.

On 02 May 2006, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide an executed oath or declaration of the inventor, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 07 November 2006, applicant responded with the present petition accompanied by a petition for a four-month extension of time. With the payment of the four-month extension of time fee and certification under 37 CFR 1.8 that the present mailing was deposited on 02 November 2006, applicant's present filing is considered timely filed.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(g); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the non-signing inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as an agent for the non-signing inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. Applicant has satisfied items (1) and (3)-(6).

Regarding item (2), according to the enclosed declaration of Jiwon Lim, he attempted to mail a complete set of the application papers to the inventor. These papers were returned as they were mailed to an incorrect address. It assumed that since Mr. Lim then attempted to find a current address that the address originally mailed to was incorrect because the inventor no longer lived there. As such, applicant is required to show that a diligent effort was made to locate the missing inventor. As stated in the Manual of Patent Examination Procedure (MPEP), Section 409.03(d) Proof of Unavailability or Refusal, "Copies of documentary evidence such as internet searches, certified mail return receipts, cover letters of instructions, telegrams, that support a finding that the nonsigning inventor could not be found or reached should be made part of the statement. The steps taken to locate the whereabouts of the nonsigning inventor should be included in the statement of facts." The statement of facts from Mr. Lim does not satisfy this item. Mr. Lim states that "All efforts to obtain a current address, phone number, or email address, using Korea Info Service Corporation have failed to provide new information concerning the whereabouts of Mr. Cho." In addition, Mr. Lim states that he was unable to find an email address for Mr. Cho using a well-known Korean web mail service using his residence identification information. However, Mr. Lim does not detail these efforts nor include copies of his search results. Mr. Lim does not provide an explanation of what the Korea Info Service Corporation is or how using old residence information would enable him to presently locate the inventor. A renewed petition under 37 CFR 1.47(b) should include the results of any internet or telephone directory searches which were performed in an effort to locate the non-signing inventor, as well as, an explanation of the searches by the party attempting to locate Mr. Cho.

In light of the above, it is not possible to grant applicant's petition at this time.

CONCLUSION

For the reasons stated above, applicant's petition under 37 CFR 1.47(b) is **DISMISSED**, **without prejudice**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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